WP(C) 3836/2001
BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA
JUDGMENT AND ORDER (ORAL)

This writ petition is directed against the order dated 21.3.2001 passed by the Deputy Commissioner of Taxes (appeals), Guwahati rejecting the appeals preferred by the petitioner which it preferred against the assessment orders.

2. The petitioner is a proprietorship firm carrying on the business of wholesale and supply of motor parts etc. It is registered under the provisions of the Assam General Sales Tax Act, 1993 and the Rules framed there under.

3. On 6.1.1997, the Inspector of Taxes, Guwahati, Unit-B in exercise of his power conferred under Section 44 (3) of the AGST Act, 1993 seized some documents/books belonging to the petitioner at the petitioner's business premises on the ground that some sales through challans were found not recorded duly in the regular books of accounts with an intention to suppress the sales. In Para-6 of the writ petition, the petitioner has stated that although the search and seizure was illegal, there being pressure mounted by the respondents, it compounded the said case on payment of Rs.1,000/- and in addition, Rs.50,000/- as advance tax for the months of December, 1996 to March, 1997.

4. After the aforesaid deposits of the amounts, the respondents released the seized documents on 9.4.1997.

5. The petitioner submitted its annual returns for the years 1995-96 and 1996-97. According to the petitioner, along with the returns, it also submitted the books of accounts/documents necessary for assessment. The matter was fixed for assessment-hearing before the Superintendent of Taxes, Unit-D, Guwahati on 13.3.1999. According to the petitioner, its proprietor appeared before the authority with all necessary documents including the seized documents.

6. The Respondent No.4 on the basis of the report submitted by the Respondent No.5, prepared on the basis of the seized books of accounts for the year 1995-96 and 1996-97, recorded the finding that the petitioner made suppression of sales to the tune of Rs.2,46,626/- and Rs.9,25,791/- for the assessment years of 1995-96 and 1996-97 and hence, taxable @ 14% per annum. Accordingly, directions were issued to issue demand notice for payment of the amount specified in the assessment orders. The assessment orders dated 31.3.1999 have been annexed as Annexure-'G' and 'H' respectively.

7. After the aforesaid orders, the Respondent No.4 issued two demand notices on 18.5.1999 making a demand of Rs.49,279/- (1995-96) and Rs.1,38,596/- (1996-97). Direction was issued for payment of the amounts on or before 7.6.1999.

8. Being aggrieved, the petitioner preferred two appeals before the Deputy Commissioner of Taxes (Appeals) i.e. the Respondent No.3. The appeals have been disposed of by order dated 21.3.1999 issued under Memo No.KDG/GST-2/99/90-92 dated 11.4.2001. The order is reproduced below :-

O R D E R

Dated Guwahat, the 21st March, 2001.

These two appeals came up for hearing in the wake of two appeal petitions filed in this office by M/S Agarwal Motor Co., Feroza Complex, Guwahati against the assessment orders of the Sr. Supdt. of Taxes, Guwahati, Unit-D in respect of the A/Y 1995-96 and A/Y 1996-97 respectively under the AGST

Act. In brief, the appellant is a dealer in motor-parts and had filed his return and produced the books-of-accounts. The assessing officer, while completing the assessment, had inter-alia included certain sales in both the periods which related to the suppressed turnover, detected earlier by the Inspector of Taxes. The appellant is aggrieved with such assessment orders.

Shri B. Bhattacharjee, authorized representative of the appellant appeared at the time of hearing and contended that the assessing officer erred in adding sales turnover of Rs.2,46,632/- in the A/Y 1995-96 and Rs.9,25,791/- in the A/Y 1996-97 as suppressed turnovers without allowing sufficient opportunity of being heard to the appellant. It was argued that assessing officer, while disposing of the seized case, had entirely relied on the Inspector's report without verifying the seized books himself and without taking the minimum proceeding to verify the actual facts. It has also been contended by the authorized representative that the assessing officer had released the seized books after the appellant deposited and advance tax amount of Rs.50,000/- and he had compounded the offence after payment of the composition money of Rs.1000/-, and as such, it was apparent that no tax as stated in the assessment was ever suppressed by the dealer at any stage. He pointed out that it is the general practice not to release the seized books till the evaded taxes are paid, and in the instant case, it is clear that the appellant was not required to deposit such tax.

Shri R. Prasad, Supdt. of Taxes, Guwahati Unit-D appeared at the time of hearing and defended the action of the Assessing Officer.

Heard both the sides and perused records. It appears that the Inspector of Taxes of the area had made seizure of some books of accounts, which were verified only by him and the assessee was asked to show cause against prosecution. The case was compounded on the assessee's prayer on deposition of the composition money of Rs.1000/-. That apart, the dealer had deposited Rs.50,000/- as an advance tax amount in the A/Y 1996-97. It is curious to observe that the learned assessing officer did not insist on the deposition of the entire evaded tax for both the assessment year before actually compounding the offence and before releasing the books of accounts and this fact has given credence to the appellant's contention that what were seized were in facxt the regular sale bills/vouchers of the dealer and not anything else. Be that as it may, as the seized books were released already before the completion of the assessment, it is now impossible to ascertain any suppressed sales conclusively. Further, as the appellant had himself prayed for composition of the offence committed in this regard, I have no means to examine if the suppression of taxable turnover was matter disputed by the appellant at the relevant time.

In view of my above observations, I find no materials to interfere with the two assessment orders appealed against. The orders of assessment are confirmed.

Appeal fails.

Inform all.

9. Being aggrieved, the petitioner has preferred the instant writ petition. In Para-16 of the writ petition, the petitioner has stated that the Assessing Officer invested with the power to make assessment of tax, discharged the quasi-judicial powers and he was bound to observe the principles of natural justice in reaching his conclusion. According to the petitioner, the Respondent No.4 acted most illegally and contrary to the principles of natural justice towards passing the orders of assessment relying upon the report of the Inspector of Taxes, without giving the petitioner any opportunity whatsoever to meet his case and to show that there was no fallacy in its returns filed. It has been stated by the petitioner that the appellate authority also did not at all consider that aspect of the matter in passing the impugned order.

10. Referring to Section 67 of the Act and Rule 30 of the Rules, the petitioner has stated that as it has already paid the composition amount and the tax due, the question of payment of any other tax, as regards the alleged search and seizure does not arise.

11. In Para-20 of the writ petition, the petitioner has also stated that the petitioner was neither furnished with copy of the report submitted by the Inspector of Taxes nor the Assessing Officer pointing out to the petitioner anything about the submission of the report at the time of assessment and as such, the Assessing Officer acted arbitrarily, illegally and without jurisdiction in completing the assessment by relying upon the said report of the Inspector of Taxes behind the back of the petitioner. It has further been stated that since no opportunity whatsoever was granted to the petitioner to contradict his report, the impugned orders by assessment based on such alleged report is violative of the principles of natural justice and administrative fairplay.

12. Although the respondents have not filed any counter affidavit, but the learned counsel appearing for them, have produced the records. I have heard Ms Nitu Hawelia, learned counsel for the petitioner as well as Mr. R. Dubey, learned Standing Counsel, Revenue. Placing reliance on the decision of the Division Bench of this Court, reported in (1989) 2 GLR 461 (Shri Dwijendra Kumar Bhattacharjee v. The Superintendent of Taxes, Government of Tripura, Agartala and others), learned counsel for the petitioner has submitted that there being gross violation of the principles of natural justice in not pointing out the evidence relied upon towards passing the impugned orders of assessment, same is liable to be interferred with. Placing reliance on the same very decision, the learned counsel representing the respondents, on the other hand, has submitted that the petitioner having been provided with due opportunity and it having been provided with all the required documents, the plea of the petitioner regarding violation of the principles of natural justice is not at all sustainable.

13. Learned counsel for the petitioner, while referring to the grounds of appeal, has submitted that she would not press Ground No.6, by which it was contended that no show cause notice was issued while taking up the prosecution proceeding. For a ready reference, the grounds urged in the appeal are quoted below :-

Grounds of Appeal

1995-96

1. For that the assessment is bad in law as well as in fact as the learned AO while compleeting assessment did not follow the minimum principles of natural justice.

2. For that the learned SST has erred in adding a sales turnover of Rs.2,46,632/- as suppressed turnover to the assessable turnover of sales at 1st point to others under schedule IV on the basis of a seizure report of Inspector of Tax which is ir3regular and without the sanction of law as the same is done without proper verification and without giving the assessee an opportunity of being heard.

3. For that while disposing the seized case the learned AO has entirely relied on the report of the IT without bothering to take up minimum proceedings to verify the actual facts.

4. For that the sales turnover derived by the IT from the seized documents and determination of the impugned turnover as sales turnover of goods t5axabloe at 1st point under schedule IV are not based on any valid documentary evidence.

5. For the learned AO should have verified the facts by himself before determining the same as suppressed turnover and adding same with the assessable turnover of goods taxable at 1st point to others under Schedule IV.

6. For that the learned SST did not issue any show cause notice to the assessee while taking up the prosecution proceedings which is tantamount to exparte decision.

7. For that there were no suppression of taxable turnover as reported by the IT as the impugned sales turnover fully within the intervening period of abolition of schedule IV i.e. between 15.9.95 to 31.3.96.

8. For that the sales reported by the IT are all locally purchased goods under schedule II which suffered tax at 1st point and these are duly recorded in the books of accounts on the basis of which the turnover is submitted.

9. For that the learned AO's action in determining the sales turnover of Rs.2,46,632/- as suppressed turnover and adding the same with the assessable turnover is arbitrary and without the principles of natural justice and as such the assessment is illegal and bad to law.

14. I have given my anxious consideration to the submissions advanced by the learned counsel for the parties and have considered the materials on record. Although the petitioner has contended that the documents were not furnished, but the Annexure-'B' seizure memo reflects that the seizure was made from the proprietor of the petitioner-Company. As against the plea of the petitioner that the report furnished by the Respondent No.5 was not furnished to it, it is found that in the grounds of appeal, no such plea was taken.

15. It is the definite case of the petitioner that the assessment order has been passed behind its back. According to it, there is no material to arrive at such a finding. However, the records produced by the learned Standing Counsel speaks otherwise. The petitioner itself volunteered for depositing of Rs.50,000/- as lump sum advance tax for 1996-97 and for submission of the revised return at the time of assessment, if necessary. The letter dated 7.4.1997 was written by the petitioner to the Superintendent of Taxes in response to the show cause notice dated 4.4.1997. The show cause notice is reproduced below :-

To
M/S Aggarwal Motor Company,
AT Road, Guwahati.

Sub :- Notice to show cause for prosecution.

Whereas on verification of the books of accounts and documents seized by the Inspector of Taxes on 7.1.97 it appears that the following turn over during the assessment year 1995-96 and 1996-97 were not entered into your regular books of accounts.

Assessment Year	Taxable Turn over
1995-96	Rs.2,57,922/-
1996-97	Rs.9,75,306/-

You are therefore, required to show cause in writing either by appearing personally or cause to appear through your authorized representative on 7.4.97 at 11 AM before the undersigned at his office as to why you will not be prosecuted in the Court of law for offence committed under the provision of Section 61 of Assam General Sales Tax Act, 93

16. In the proceeding before the authority, there was no whisper on the part

of the petitioner relating to the violation of the principles of natural justic e. This is precisely the reason as to why in the grounds of appeal, it was not contended that the petitioner was not furnished with the required documents. T he petitioner duly appeared in the proceeding. However, in the writ petition, there is no mention about the issuance of the show cause notice etc.

17. The contention regarding application of Section 67 of the Act and Rule 3 0 of the Rules has also not been acceptable since the said provisions are not a pplicable to the facts and circumstances of the case.

18. In the impugned order passed by the appellate authority, the above aspe cts of the matter find mention. The case was compounded on the assessee's praye r on deposition of the composition money of Rs.1,000/-. Apart from that, the pe titioner also deposited Rs.50,000/- as advance tax. The appellate authority has observed that the Assessing Officer did not insist on the deposition of the enti re evaded tax for both the assessment years before actually compounding the offe nce and before releasing the books of accounts. As the petitioner itself pray ed for composition of the offence committed and no dispute having been raised i n respect of the allegation relating to taxable turn over, the appellate author ity has rightly rejected the appeal.

19. The decision on which the learned counsel for the petitioner has placed reliance i.e. Shri Dwijendra Kumar Bhattacharjee (supra) is not at all applicabl e to the facts and circumstances of the case so as to extend help to the case of the petitioner. In Para-11 and 12 of the said judgment, it has been observed t hat the Assessing Officer cannot rely upon any evidence or any fact in arriving at his conclusion without first pointing out the same to the assessee and giving him reasonable opportunity of meeting the case which is sought to be made out in the assessment order. It has further been observed that the assessee has a ri ght to inspect the record and the relevant documents. In the instant case, the petitioner was issued with the show cause notice and it was provided with ample opportunity to have its say in the matter. This is precisely the reason as to why Mr. Dubey, learned Standing Counsel, Revenue has referred to Para-13 of the aforesaid judgment, which is quoted below :-

13. The assessing officer, after making all inquiries and giving reasonable opp ortunity of hearing to the assessee, can definitely arrive at his own conclusion . However, the assessment made must have reference to some evidence or material on record. Having rejected the books of account or the evidence produced by the assessee the assessing authorities cannot act arbitrarily and on pure guess and make an assessment without reference to any evidence or any material at all. No hard and fast rule can be laid down to define the sort of material on which the assessing officer can base his assessment. It will depend on the facts of each case. In any event, the assessment order must disclose not only the reasons for rejecting the return and accounts but also the basis on which the assessment i s made.

20. This is not the case of no evidence or materials on record. It is also not a case of acting arbitrarily and on pure guess. As observed in the aforesai d case, no hard and fast rules can be laid down to define the sort of material on which the Assessing Officer can base his assessment. It will depend on the facts of each case.

21. In the assessment orders mentioned above, the accounts of the dealer and their seizure by the Inspector of Taxes and as to how the case was compounded h as been noticed. The assessment orders also mention about the show cause notice issued to the petitioner. The assessment was completed on the basis of the fin ding of fact recorded in the order, which cannot be said to be arbitrary and/or based on no evidence. It is not understood as to why the petitioner has not ment

ioned anything regarding issuance of the show cause notice and its reply thereto. The aforesaid decision has also been placed to support the contention that the petitioner was not provided with reasonable opportunity by not pointing out the materials sought to be relied upon. The records produced by the learned Standing Counsel leave no manner of doubt that the petitioner got ample opportunity and had access to the documents relied upon by the assessing authority

22. During the course of hearing, the learned counsel for the petitioner has also abandoned Ground No.6 in which it was stated that the assessing authority did not issue any show cause notice to the petitioner while taking up the prosecution proceeding tentamounting the same to be ex parte decision. Such abandonment of the ground is only on production of the case records clearing revealing the issuance of the show cause notice to the petitioner and its reply thereto.

23. As noted above, the seizure was made in presence of the proprietor of the petitioner-Company. Pursuant to the seizure so made, the petitioner was called and it verified the relevant records including the report of the Inspector of Taxes. There is no mention in the writ petition about the show cause notice and the reply of the petitioner thereto. Such suppression on the part of the petitioner stares on the face of it.

24. For all the foregoing reasons, I do not find any merit in the writ petition and accordingly, it is dismissed leaving the parties to bear their own costs.